

REMARKS/ARGUMENTS

By this paper, Applicant replies to the Office Action of January 30, 2008 and respectfully requests reconsideration of the application.

Claims 1, 2, 4-23, 26-28, 31-33, 35-47 and 49-79 are now pending, a total of 72 claims. Claims 1, 23, 56 and 59 are independent.

I. Paragraph 6: Claims 1, 23, 56 and 59, and Vlazny '410

Claim 1 recites as follows

1. A method, comprising the steps of:
 - at a computer processor, receiving a plurality of bets, each bet comprising:
 - a selection of a first number of events selected from a group of events;
 - a selection of a respective participant for each of the first number of events selected; and
 - a bet amount;
 - wherein at least one selected event of a first bet of the plurality of bets comprises **a different event from the events selected to form a second bet of the plurality of bets;**
 - combining the amounts of the bets of the plurality to form a betting pool;** and
 - at a computer processor, determining an amount of a payout for winning bets of the plurality based at least in part on the amount of the bets in the betting pool.

The Office Action states as follows:

Wherein at least one selected event of a first bet of the plurality of bets comprises a different event from at least one selected event of a second bet of the plurality of bets, it is inherent for the bets to be different, otherwise it would be considered doubling the original bet.

Combining the amounts of the bets of the plurality each bet amount to form a betting pool, (fig. 9), wherein "select pool" explicitly expresses the availability of betting pools to choose the bet from, well-known pari-mutuel system.

The Office Action's understanding of pari-mutuel betting is incorrect. As Vlazny himself states in his paragraph [0006] and [0012], in known pari-mutuel betting systems, each pool contains bets on a single race, or on the identical set of races. It is not inherent to combine bets from a "plurality of bets [on] different events" into a common betting pool, as recited in claim 1, because alternatives – forming pari-mutuel pools by combining only bets from the same event or same set of events – are not only possible, but the norm. No showing of inherency or anticipation can be made based on the cited portions of Vlazny '410.

Claims 23, 56 and 59 recite language that is similar, and these claims are patentable for similar (though not identical) reasons.

II. Dependent claims

Much of the rest of the Office Action is inadequately explained.

- Paragraphs 15, 16 and 23 invoke “well-known” art in the context of § 102. Applicant notes that the reliance on “well known” art renders the entire Office Action invalid. First, “well-known” prior art may not be used in a § 102 context; “well-known” prior art is only applicable in a § 103 context. Anticipation may only be shown by reliance on a single reference, and the inferences that are inherent in that one reference, never any supplemental art, no matter how “well-known.” Second, MPEP § 2144.03(B) requires that even if art is “well known,” “the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge.” That showing is not in the Office Action, and thus the Action is too incomplete to constitute any valid rejection. Pursuant to MPEP § 2144.03(C), Applicant requests “adequate evidence” for any future assertion of common knowledge or well-known art. Because of this procedural error, none of claims 11, 12, 33, 46, 67 or 68 are rejected.
- Paragraph 16 of the Action contends that there is some correspondence between claim 12 of the present application and claim 11 of Vlazny ’410. The pertinence of Vlazny’s claim 11 is not apparent without an “explanation” as required by 37 C.F.R. § 1.104(c)(2). Without that explanation of pertinence, no rejection of claim 12 exists.
- Paragraph 18 of the Action contends that “carrying over” is shown in Vlazny ’410 ¶ [0004]. The pertinence of ¶ [0004] is not apparent with out an “explanation” as required by 37 C.F.R. § 1.104(c)(2). Claims 14, 36 and 71 are not rejected.
- Paragraph 19 says “wherein the invention discloses rules for scratches and cancellation of bets.” What does this mean? How is Vlazny ¶ [0118] pertinent to claims 15, 37 and 72?
- Paragraphs 20 and 21 of the Action contend that Vlazny’s Fig. 8 shows races from “different tracks” and “different days” being combined in a single bet. The basis for drawing these inferences from Vlazny’s Fig. 8 is not clear. Not even one track or one date is expressly shown in Fig. 8; why would there be races from two different tracks or different days? Claims 16, 17, 38, 39, 49, 73 and 74 are not rejected.
- Paragraph 25 asserts that “[TAB] can choose from a multitude of sporting events and combined them into a single bet?” This statement appears to be pure speculation on the Examiner’s part, with no grounding in the reference. What is the basis for the underlined portion of the assertion?

The dependent claims are patentable with the independent claims discussed above. In addition, the dependent claims recite additional features that further distinguish the art.

III. Conclusion

In view of the amendments and remarks, Applicant respectfully submits that the claims are in condition for allowance. Applicant requests that the application be passed to issue in due course. The Examiner is urged to telephone Applicant's undersigned counsel at the number noted below if it will advance the prosecution of this application, or with any suggestion to resolve any condition that would impede allowance. In the event that any extension of time is required, Applicant petitions for that extension of time required to make this reply timely. Kindly charge any additional fee, or credit any surplus, to Deposit Account No. 50-3938, Order No. 04-7103.

Respectfully submitted,
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Dated: April 30, 2008

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